IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.A. No.192 of 2006
Date of Decision: 8.1.2007

Commissioner of Income-Tax,
Panchkula

....Appellant through
Mr.Yogesh Putney,Advocate

Versus

The Director of Haryana State Lotteries,
Allahabad Bank Building, Sector 17,
Chandigarh.

...Respondent through
Mr.H.N. Mehtani,Advocate.

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN,
CHIEF JUSTICE.
HON'BLE MR.JUSTICE RAJIVE BHALLA

1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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**Vijender Jain, Chief Justice (Oral)**

This appeal has been filed under Section 260-A of the Income Tax Act, 1961,(hereinafter referred to as "the Act") against the order dated 2.9.2005 of the Income Tax Appellate Tribunal, Chandigarh Bench-B, Chandigarh, passed in ITA No.732/Chandi/2002 for the assessment year 1995-96, wherein the Revenue has, inter alia, raised the following questions of law :-

(1) "Whether on the facts and in the circumstances of the case, the decision of the learned ITAT cancelling penalty levied

under Section 271-C of the I.T. Act is in conformity with the law ?"

(2)"Whether on the facts and in the circumstances of the case, ignorance of law is an excuse to evade penal consequences for default in deduction of Income-tax at source?"

Learned counsel Sh.Yogesh Putney has contended on behalf of the revenue that in its annual return of TDS under Section 206 in Form No.26-C for the financial year 1994-95, the assessee failed to deduct sur-charge on the income tax deducted at source. The Assessing Officer raised a demand under Section 201(1)/201(1-A) of the Act, vide order dated 18.9.1997 and also initiated penalty proceedings under Section 271-C of the Act, for assessee"s failure to deduct sur-charge @ 15% on income tax deducted under Section 194-C of the Act, while making payments to four contractors. The stand of the assessee during the penalty proceedings was that he was unaware of the provisions of the Act and, therefore, sur-charge could not be deducted. Penalty of Rs.6,01,359/- was levied under Section 271-C of the Act, for failure to deduct sur-charge on the payments made to the aforesaid four Contractors.

The assessee filed an appeal before the C.I.T. (Appeals). The C.I.T. held that there was no element of mensrea or malafide in the conduct of the assessee because he had at least deducted tax at source and subsequently on demand, had deposited the short deduction of tax on account of sur-charge also. Consequently, the C.I.T. (Appeals) deleted the penalty.

The revenue filed an appeal before the I.T.A.T. The I.T.A.T. also agreed with the view taken by C.I.T. (Appeals) and taking into consideration that there was no conscious default by the assessee in not deducting the surcharge from the payments made to the contractors negatived the plea raised by the revenue.

Mr.Yogesh Putney, learned counsel appearing for the revenue contends that as the respondent violated the provisions of law with regard to deduction of sur-charge, they were liable to penalty under Section 271-C of the Act and the I.T.A.T. and the C.I.T. (Appeals) were not justified in deleting the same, as ignorance of statutory provisions or a bonafide error could not save the respondent from the consequences of its conduct.

On the other hand, learned counsel, Sh.H.N. Mehtani, appearing for the assessee contends that the assessee had no means to know, whether the contractor had income of more than Rs.75,000/- p.a. and, therefore, sur-charge was not deducted. However, as soon as the assessee was made aware of the fact that the sur-charge was to be deducted from the payments made to the contractors, the same was deducted and the shortfall in deduction made good by making payment to the revenue. It is contended that the error being bonafide, the C.I.T. (Appeals) and the I.T.A.T. rightly set aside the penalty.

We have perused the order of C.I.T. (Appeals) as well as the order passed by the I.T.A.T. The I.T.A.T. has relied upon a decision of the Hon'ble Supreme Court in case of **Hindustan Steel Ltd. V. State of Orissa,**

83 ITR, 26, wherein it was held that a penalty should not be imposed merely because it is lawful to do so. It was further held that penalty shall not be imposed, if there has been no conscious default or disregard to the statutory provisions. The assessee is a government undertaking and no malafides have been attributed to it. The assessee has established a reasonable cause in not making deduction of sur-charge alongwith the tax. The assessee's failure to deduct the surcharge was not actuated by an act of malafide. The error was duly rectified and the surcharge deposited. We find no error of law in the orders passed by the C.I.T (Appeals) and the I.T.A.T. that would require consideration. As no substantial question of law arises, the appeal is accordingly dismissed.

( VIJENDER JAIN )
CHIEF JUSTICE

8.1.2007
GS

( RAJIVE BHALLA )
JUDGE